

1895-082 Chancery Causes: David C. Willis vs. Louisville & Nashville Railroad Co.]  
Lee Co.

CA - Contract Dispute  
T - Property  
Transportation

Oversize  
Box 1:

- 1 Plat

- Deed



To The Hon. H. S. K. Morison Judge  
of the Circuit Court of Lee County  
Virginia:

Your orator David C.  
Willis who humbly complain-  
ing would respectfully repre-  
sent that heretofore, on the 21<sup>st</sup>  
day of August 1889, he was and  
still is the owner in fee of a  
large and valuable farm in Lee  
County Va, whereat he then and  
now resides, This farm lies in  
the main from Indian Creek to the  
Northward, but his house barn  
and graneries are situated to the  
south of the Louisville & Nashville  
Rail road, and said road had in  
the main been located on the day  
first mentioned and on that day  
said road by its agents, applied  
to your orator for a deed to a right  
of way, It was apparent to any  
one that the construction of said road  
on the location proposed would greatly  
injure and interfere with the value  
use & enjoyment of said farm, and  
he refused to make said deed unless  
said Company would agree to make  
your orator suitable crossings at such  
points as he might select and require  
and they the said road were not to  
construct their road within 100 feet



Am unauthenticated copy of which is herewith  
filed and is marked "Deed" and is supposed to be con-  
taining a part hereof - And that part contained  
it is a true copy as entered in Deed Book 25 page 35 - 36.

of the grave of John Willis his then  
deceased son. The said Company was also  
to erect & maintain suitable cattle guards  
and they, as well as the crossings, were  
to be at such places as your order  
shall designate. All these provisions  
were put into and constitute a part  
of said deed, which was then made &  
executed on the day first herein  
mentioned. Said Company accepted of  
said deed constructed its road bed under  
it & upon the land conveyed, and since  
then are in its daily & continual use  
thereof. Yet they have not made  
any crossings, and only the mere sim-  
ulacra of cattle guards, they do not  
turn stock and are practically of no  
use. They constructed their road bed  
in less than 100 feet of said grave  
made a deep cut near to it, and across  
his main farm road and haul way  
thus causing him to have to go nearly  
one half mile over rough ground to get  
to and from the northern part of his  
farm by great odds the largest por-  
tion. And said Company has not put  
any crossings over its said track except  
one which is almost useless so much  
cut of the way is it. Your order can  
not without great damage and in-  
convenience do with less than 6 cattle  
guards and three crossings, as his farm



is a large one, and he has to haul the greater part of his grain grasses across said road as well as pass to and from his house & barn with his live stock and as it is he would have to make a road a mile or so parallel with said road. It was to avoid this that he made said deed for a nominal sum of one dollar giving said road 8 acres of valuable land worth \$30 per acre. Your orator has time and again applied to the engineers section master or foreman, Gould Man-ager & local atty to make him the needed indispensable & justly due cut the gulch & crossings, offering at all times to point out the places needed to be supplied, to all which a deaf ear has been turned and no effort made to comply with said deed, your orator has done every thing upon his part to make said deed perfect & effectual and said Company having accepted it and enjoys its use control & management of the land conveyed therein he is advised a Court of equity will compel said Company to fully perform its part and also and perform such things as by said deed it undertook to do.

The object of this bill therefore is to compel said Company to make the required crossings at the places designated by your orator and also the cattle gulch



as by the terms of said deed required and that they be compelled to move their said road bed & track away from said grave of John Willis more than 100 feet and that they be required to do the thing in said deed contained as therein specified & set forth.

To effect which your orator prays that the Louisville & Nashville Railroad Company be made a party defendant to this bill (it being a body corporate doing business under the laws of Kentucky) and answer to same but it need not do so upon oath that being waived. And on a hearing a decree be rendered, directing a specific execution of said contract; or if inequitable and not practicable then that said Contract be annulled set aside and held void and an enquiry be made of the damage caused your orator by reason of its non-performance by said defendant Company, or if mistaken as to the relief herein sought then that all such other further & general relief be granted him as this case merits or he is in any wise entitled to. And for all other further & general relief may say a mine &c.

A. L. Ordman

pg



Plffs Costs

C 6.41  
S 50

\$6.91

Defts Costs

C 2.44  
att 15.00  
Co C 25

\$17.69

LP

D. C. Willis

vs Bill Chy

L. & A. R. R. Co

1893, 1<sup>st</sup> Octo Rules Bill filed  
Spa executed & D. Wisi

" 2<sup>d</sup> Octo Rules D. Wisi  
Confirmed & cause set  
for hearing by Plff

November 8<sup>th</sup> 1895  
Dece. final order  
Book Page 249



To the Honorable H.S.K. Morison, Judge of the Circuit Court of  
Lee County Virginia:

The Demurrer and answer of the Louisville and Nashville  
Railroad Company a body corporate doing business under the laws of Vir-  
ginia, to a bill in Chancery exhibited against it in this Honorable  
Court by D.C. Willis.

Respondent says the Complainants bill is not sufficient in law to call  
upon this respondent to answer in this Honorable Court, and that it de-  
murs thereto and prays judgement of its said demurrer &c.

And not waiving said demurrer, but relying and insisting thereon,  
should other and further answer be required of it, answering it says:  
that it is true that on the 21st day of August 1889, the said Complain-  
was the owner of a tract of land situated in Lee County Va. on which he  
then and now resides, and respondent supposes that said farm is located  
as claimed by respondent in his bill, and it is likewise true that the  
dwelling house, barn &c of said Complainant are situated on the South  
side of the Railroad of respondent: it is likewise true that said Rail-  
road where it passes through the lands of said Complainant had been lo-  
cated, not only "mainly" but permanently, on said 21st day of August  
1889: it is likewise true that the Agent or Attorney of respondent, did  
on that day, apply to Complainant for a Right of Way through his land,  
and it is further true that the said Complainant by deed duly executed  
and acknowledged, did on that day convey to said respondent, in fee simple  
a strip of land along said located line and on both sides thereof for  
the purpose of allowing said Railroad to be constructed thereon, and up  
on said strip of land thus conveyed said road was and is constructed, but  
Respondent denies that it was apparent to any one that the construc-  
tion of said road on the location proposed would greatly injure and in-  
terfere with the value, use and enjoyment of said farm."

Respondent says that it is true that at the time said Willis execu-  
ted said deed he demanded that said Company should erect and maintain  
necessary crossings and cattle-guards and one of the stipulations in  
said deed is in the following language "and the further consideration  
that said Company shall erect and maintain crossings and cattle guards  
at such places as said Willis shall designate."



It is true that said defendant Company accepted said deed constructed its road upon the strip of land conveyed to it for the purpose and exactly upon the location which had been made by its Engineers prior to the date of said deed, which said location was fully known to the said Willis on the day he executed the said deed. But respondent denies the allegation that "it has not made any crossings and only made the mere semblance of cattle guards, which do not turn stock and are practically of no use." On the contrary respondent says it has made and kept in good repair three crossings over its said road where it passes through the lands of said Willis, one of said crossings is at the ~~East~~ east end of the said Willis's land and is at a point where he formerly had as now has a roadway leading from his house to the northern part of his farm, the next one going west is almost directly opposite his barn and passes under ~~the~~ the railroad and is at one of the most convenient points for a crossing on his entire farm, the third crossing is about one fourth of a mile further west on said farm, a level grade crossing, in one of his principal fields, and certainly as conveniently located for his use as it could be; and respondent here asserts that it has made and maintained and is now maintaining crossings for said Willis at every necessary or convenient point on said Willis's land and at every point where he has ever demanded one, unless perhaps he has to some of the employees of said road in his attempted, persistent, and repeated attempts at annoyance to said Company, demanded that said Company should make him an overhead crossing at a cut some <sup>three</sup> ~~two~~ hundred yards west of the crossing under the tract hereinbefore mentioned as the second crossing erected on his land, respondent says that a crossing could not be reasonably or safely made at this point and that if made it would be of no value whatever to the said Willis, the cut is not deep enough to allow a crossing to be made so that a train could safely pass under it and if ~~it~~ it could be made so that a train could pass under it, it would be on a steep point, ~~where~~ from which it would be impossible to get down with a wagon, and respondent further says, that the said Willis never had a road of any kind at said place before the railroad was constructed. Respondent says that it has constructed suitable and safe cattle guards at every point on said Willis's land where a fence crosses said railroad and on the division lines between him and the co-termin-



bus owners both on the East and West. It may be true that said cattle guards when first put in would not turn all kinds of stock but sometime before the institution of this suit each of said cattle guards had been rebuilt and fully repaired, so that at the time this suit was instituted said cattle guards were and they now are a complete protection to the lands and growing crops of said Willis. And respondent avers that all damage done to the crops of the said Willis by reason of stock getting over the cattle guards and destroying his growing crops has been fully paid for by respondent.

*A map of the R.R. Co's right of way through complainant's lands, showing the cattle-guards, crossings, grave of John Willis*  
Respondent says, the allegation that it constructed its road bed in

less than one hundred feet of the grave of John Willis is not true, but on the contrary it is 118 feet from the center line of said railroad to said grave, by the terms of said deed the center line of said road was not be nearer than 100 feet to said grave. It is true that respondent made a deep cut opposite said grave but this cut in no wise interferes with the grave as the nearest edge of said cut to said grave is at least 60 feet therefrom. Respondent denies that this cut is across the main haulway of the Complainant, and it denies if a crossing was made over its track at a point opposite said grave that it would be of any practical use to said Willis, and it asserts that the crossings already put in by it for said Complainant are at the most suitable and convenient points that could be selected for him, and no other crossing could be erected for him that could be made useful by him for farm purposes.

Your respondent admits that it would be an inconvenience to said Willis to do with less than three crossings on his farm, and exactly that number has been put and are now being maintained for him, nor can your respondent see how it is that said Willis can allege that he will, as said crossings now are have to make a road parallel with the railroad for a distance of a mile or so, in order to enjoy his farm, when said railroad only runs over the lands which he conveyed to respondent a distance of 3289 feet, and especially when he says that the principal part of his farm lies on the north side of said track.

Respondent denies that it or its employees have turned a deaf ear to the oft repeated requests of the said Complainant to make him the needed, indispensable and justly due cattle guards and crossings, but as before stated a cattle guard has been put in for said Willis at every place where a fence crosses said railroad, and at every place where one is necessary on his land.

+ no evidence and not buildings + is brought to the court as part of this answer.







Respondent has made crossings for him at every point where they would be either useful or convenient or necessary, and at every place where he has ever demanded one, except an overhead or bridge crossing on the spur opposite the grave of John Willis, and a crossing at this point would not be useful necessary or convenient to said Willis, and if put in would be a constant source of danger to the travelling public.

Respondent thinks that if Complainant instead of saying that he had done that "he has done every thing on his part to make said deed perfect and effectual" had said that since he made said deed he had been studying and doing all that he could do to make it in effectual and unavailing, he would have come nearer telling the truth, because this is the fourth suit he has instituted against respondent, one of which if respondent is correctly informed was for the purpose of recovering damages because the fill at one point had slightly exceeded the right of way, and respondent here again avers that it has done everything on its part required by said deed or that could be reasonable required of it either under the deed or under the law.

And now having answered said bill as fully as it is advised it is necessary for it to answer it and here denying every allegation not herein before denied, or admitted and explained your respondent prays to be hence dismissed with its costs in this case so unjustly expended.

*C. T. Duncan*  
*Atty.*

*Louisville & Nashville*  
*Railroad Company.*



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L & N. R. R. Co.  
Ads. { Answer  
D. C. Hillis

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D.C. Willis,

Plaintiff.

vs.

In Chancery.

L. & N. R. R. Co.,

Defendant.

This cause came on again this day to be heard upon the bill of the complainant and exhibit there with, the demurrer and answer of the defendant and exhibit therewith, joinder in said demurrer and general replication to said answer, and was argued by counsel. On consideration whereof, the court is of opinion that said demurrer is well taken. It is therefore adjudged, ordered and decreed that said demurrer be sustained, and the complainant's bill dismissed; that the defendant recover its costs for which execution may issue; and that the cause be stricken from the docket.



D. C. Willis

vs.  $\frac{3}{2}$  decree final.

L. & N. R. R. Co

Q. B. P. 249

Enter this decree

M. V. M.

Nov. 8th 1893-



H. C. Willis

75

Louisville & Nashville R. R. Co.

On motion of the Defendant leave is granted it to file its answer in this case and the same is accordingly filed, to which answer the complainant replied generally and the cause is continued.



N. C. Willis  
as 3 ~~December~~.

L + N. R. R. Co

Entered Ch O B p. 521  
Nov. 13<sup>th</sup> 1893.

Enter this share  
H. C. Willis

Nov. 13<sup>th</sup> 1893



1 This deed, made this the 21<sup>st</sup> day of August  
2 1889 between David C. Willis and Martha B.  
3 his wife of the County of Lee and State of Va  
4 parties of the first part, and the Louisville and Nashville  
5 Rail Road Company a Corporation doing business  
6 under the laws of Virginia party of the second part,  
7 Witnesseth that in consideration of the fact that  
8 said Louisville and Nashville Rail Road Company has  
9 located and now propose to construct its Cumberland  
10 Valley Branch over the lands of the said David C. Willis  
11 situate lying and being in the County of Lee  
12 and State of Virginia and the advantages to be derived  
13 therefrom to the said David C. Willis and the further  
14 consideration that said Company shall erect and  
15 maintain crossings and cattle guards at such  
16 places as said Willis shall designate, and the  
17 further consideration that said Willis reserves  
18 the right to use and cultivate said lands nearly  
19 to the road bed on each side thereof as can be  
20 safely done, and the center of said rail road  
21 shall not be built nearer than 100 feet to the  
22 grave of of John Willis, and the further con-  
23 sideration of the sum of one dollar cash  
24 in hand paid the receipt of which is hereby  
25 acknowledged, the said party of the first part  
26 have this day given granted bargained and sold  
27 and by these presents do convey to the Louisville  
28 and Nashville Rail Road Company its successors  
29 and assigns for its Cumberland Valley Branch a  
30 strip piece or parcel of land beginning at a  
31 point in the center line of said rail road as  
32 now located where said line crosses the



1 division line between the land of Hugh Mc.  
2 Kiney & wife and said D. C. Willis the bearing  
3 of which line is South  $80^{\circ}$  W. thence by a tangent  
4 bearing  $S. 68^{\circ} 23' E.$  for a distance of 226 feet with  
5 a width of 60 feet on each side of said center  
6 line; thence continuing said tangent with a width  
7 of 50 feet on each side of said center line, for  
8 a distance of  $217 \frac{4}{10}$  feet to a point of a curve,  
9 thence by a  $4^{\circ} 30'$  curve to the left and with a  
10 width of 50 feet on each side of said center  
11 line for a distance of 666 feet to a point of  
12 tangent; thence by a tangent bearing  $N. 81^{\circ} 39' E.$   
13 for a distance of  $916 \frac{6}{10}$ ; thence continuing said  
14 tangent and with a width of 50 feet on each  
15 side of said center line for a distance 700 feet;  
16 thence continuing said tangent with a width  
17 of 50 feet on each side of said center line for  
18 a distance of 463 feet to the line of John Ball's  
19 land, the bearing of which line is  $S. 15^{\circ} W.$   
20 Containing  $8 \frac{67}{100}$  acres.

21 To have and to hold said strip or parcel of  
22 land with its appurtenances and privileges  
23 to the said Louisville and Nashville Rail road  
24 Company its successors and assigns forever  
25 And the said parties of the first part for  
26 themselves, their heirs and assigns do hereby  
27 release the said Louisville and Nashville Rail-  
28 road Company its successors and assigns,  
29 from any further payment for or on ac-  
30 count of the appropriation and occupancy  
31 of said strip of land as well as for all damages  
32 that may accrue by or result from the location



1 Construction and operation of said Cumberland  
2 valley branch of the Louisville and Nashville  
3 Rail road over and upon said strip or parcel  
4 of land. Now the said David C. Willis and  
5 Martha B. his wife warrant generally the  
6 strip of land hereby conveyed. Witness the  
7 following signatures and seals this day and  
8 year first above written.

D. C. Willis (L.S.)

10 Deed Book 25 pages 35-36.



L. & A. R. R. Co

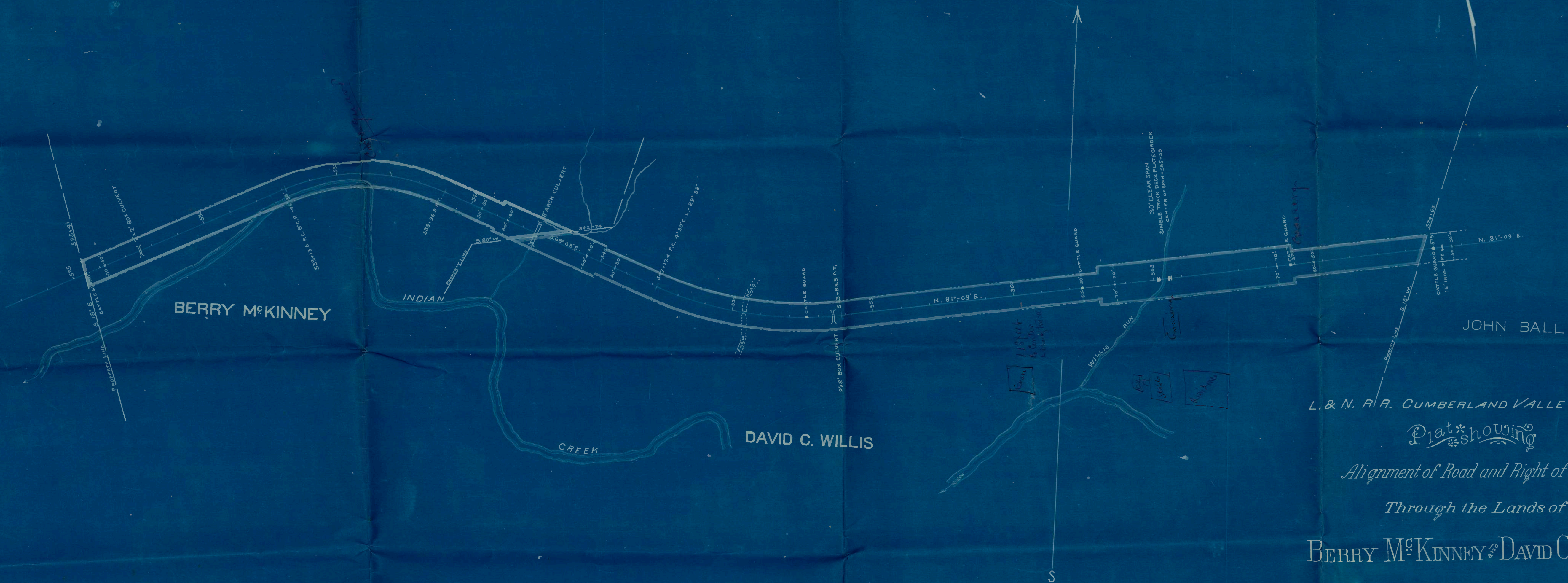
Trans seed.

D. C. Willis

Deed Book 25-p. 35<sup>th</sup>

"Deed"





L. & N. R. R. CUMBERLAND VALLEY DIV'N.

*Showing*

*Alignment of Road and Right of way*

*Through the Lands of*

BERRY MCKINNEY & DAVID C. WILLIS

*Lee County, Virginia.*

SCALE: 200 FT. TO 1 IN.

*Real Estate Dept., L. & N. R. R., Louisville Ky. Oct. 26<sup>th</sup> 1893.*